

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED SPECIALTY INSURANCE
COMPANY,

Plaintiff,

v.

LUX MAINTENANCE & REN. CORP.,
CORNELL UNIVERSITY,
ROCKEFELLER UNIVERSITY, THE
SOCIETY OF THE NEW YORK
HOSPITAL, MEMORIAL HOSPITAL
FOR CANCER AND ALLIED DISEASES,
and MANHATTAN EYE EAR &
THROAT HOSPITAL,

Defendants.

Civil Action –
Complaint for Declaratory Judgment

Case No.: 1:18-cv-03083-ER

AFFIRMATION
IN PARTIAL OPPOSITION

Michael L. Stonberg, an attorney duly admitted to practice law in the courts of the State of New York, hereby affirms the following, pursuant to the CPLR:

1. I am a member of the law firm of Stonberg Moran, LLP, attorneys for Defendants **CORNELL UNIVERSITY, ROCKEFELLER UNIVERSITY, THE SOCIETY OF THE NEW YORK HOSPITAL, MEMORIAL HOSPITAL FOR CANCER AND ALLIED DISEASES, and MANHATTAN EYE EAR & THROAT HOSPITAL** in the above matter. I am fully familiar with the facts and circumstances set forth herein.

2. I submit this affirmation in partial opposition to plaintiff's motion for a default against co-defendant **LUX MAINTENANCE & REN. CORP. ("Lux")**.

3. The undersigned has no idea whether plaintiff effectively served Lux and takes no position with respect to that issue. Rather, I submit this affidavit to protect my clients' rights against plaintiff once they ripen.

4. Plaintiff's named insured is Lux. Lux agreed to provide my clients with additional insured coverage for the underlying Rodriguez and Carabajo personal injury actions, which is the central issue in this matter. In the underlying matters, my clients have asserted third-party claims against Lux and Lux has defaulted in appearing (because plaintiff herein wrongfully disclaimed coverage). Upon information and belief, my clients will be moving for a default judgment against Lux in those underlying third-party actions.

5. Once my clients secure judgments against Lux, we will have standing to assert Lux's rights against plaintiff pursuant to Insurance Law §3420. In fact, we have asserted a counterclaim against plaintiff seeking a judgment declaring that plaintiff is obligated to defend and indemnify Lux in those underlying actions. Defendants CORNELL UNIVERSITY, ROCKEFELLER UNIVERSITY, THE SOCIETY OF THE NEW YORK HOSPITAL, MEMORIAL HOSPITAL FOR CANCER AND ALLIED DISEASES, and MANHATTAN EYE EAR & THROAT HOSPITAL should not be bound by Lux's default in this declaratory judgment action, particularly since Lux's default is caused by plaintiff's wrongful refusal to defend its insured. If anything, this default should not be considered a ruling on the merits of plaintiff's disclaimer to Lux.

WHEREFORE, it is respectfully requested that this Court issue a procedural certificate of default only, if appropriate, but allow the remaining parties to fully litigate whether plaintiff wrongfully disclaimed coverage to co-defendant LUX MAINTENANCE & REN. CORP. in the underlying actions, together with such other and further relief as the Court deems just and proper under the circumstances.

DATED: New York, New York
June 14, 2018

STONBERG MORAN, LLP
Attorneys for Defendants
CORNELL UNIVERSITY, ROCKEFELLER
UNIVERSITY, THE SOCIETY OF THE NEW YORK
HOSPITAL, MEMORIAL HOSPITAL FOR
CANCER AND ALLIED DISEASES, and
MANHATTAN EYE EAR & THROAT HOSPITAL

By: 

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TO:

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